

1 John R. Benefiel (P 28970)  
2 280 Daines Street  
3 Suite 100 B  
4 Birmingham, Michigan 48009-6244  
5 248-644-1455

6 Charles F. Reidelbach, Jr. (167482)  
7 PRESSEISEN & REIDELBACH  
8 The Chamber Building  
9 110 West "C" Street; Suite 714  
10 San Diego, California 92101  
11 619-234-4057  
12 Attorneys for Defendant

13 **IN THE UNITED STATES DISTRICT COURT**  
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 **NEW AGE PRODUCTS, INC.,**

Case No. 96 2129 J CGA

16 Plaintiff,

**DECLARATION OF  
FRELING E. BAKER**

17 v

18 **PROGRESSIVE INTERNATIONAL  
CORPORATION,**

19 Defendant.

20 **PROGRESSIVE INTERNATIONAL  
CORPORATION,**

21 Counterclaimant,

22 v

23 **NEW AGE PRODUCTS, INC.,**

24 Counterdefendant.

25 I, Freling E. Baker, do declare that:

26 1. I am a registered patent attorney, Registration No.  
27 24,078.  
28

1           2.     Sometime in early 1979, I met with a potential client,  
2     a Mrs. Marian Gillett, who had a product idea for a flexible  
3     plastic kitchen cutting mat. She provided a written description,  
4     a true copy of each is attached as Exhibits 1 and 2.

5           3.     I proceeded to prepare a patent application on this  
6     invention (a true copy is attached as Exhibit 3) and file it in  
7     the United States Patent and Trademark Office, which assigned a  
8     Serial Number of 06/117,848 and a filing date of 02-04-80. A true  
9     copy of the Filing Receipt is attached as Exhibit 4.

10          4.     The application was subsequently refiled on 7-27-81 as  
11     a Continuation, and attached as Exhibit 4 is a true copy of the  
12     Filing Receipt.

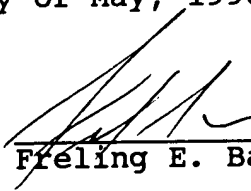
13          5.     Attached as Exhibit 6 is a true copy of a letter  
14     received from Mrs. Gillett and her husband regarding the patent  
15     application.

16          6.     Attached as Exhibits 7 and 8 are true copies of file  
17     memos from the application file.

18          7.     Attached as Exhibit 9 is a true copy of a letter I wrote  
19     to Mrs. Gillett regarding handling of her patent application file.

20                 I declare under penalty of perjury that the foregoing is true  
21     and correct.

22                 Executed on this 12<sup>th</sup> day of May, 1998.

23  
24                                   
25                                 \_\_\_\_\_  
26                                 Freling E. Baker  
27  
28

The sheet 12 as shown in Figure 1 may be of any suitable configuration or size but is preferably on the order of approximately 12 x 24 inches or 12 x 18 inches and may be made in sizes to fit standard wooden cutting boards or chopping blocks. This would  
5 permit it to be used as a protector for standard chopping blocks of the wood type to permit use thereof without damage thereto and still utilize the other features of the present invention.

As seen in Figure 1, the sheet 12 or cutting board 12 may be supported simply on a table or counter top 14 as illustrated. The  
10 board preferably includes a hole 16 for hanging from a nail or the like on a wall or in a cabinet or the like.

Turning to Figure 2, the board 12 is preferably of a generally rectangular configuration and as pointed out may be preferably constructed to fit standard sized cutting boards as a protective  
15 covering thereof. The board preferably includes a rim like edge portion 18 to add stability to the structure and similarly form a slight rim or depression for containing small amounts of liquid.

Turning to Figure 3 a cross sectional view of the edge of the member is shown showing the sheet member at 12 having a thickness  
20 on the order of approximately 9 mil with a rim member 18 extending around the periphery of the sheet. This rim member will add stability to the sheet as well as confine liquids therein. In this connection, the opening or hole 16 preferably similarly includes a rim to prevent the spilling of liquid therethrough.

25 Turning to Figure 4 there is illustrated the board member 12 curled into a substantially funnel shape having a lower or spout like portion shown at the lower end for funnelling various materials such as cuttings or the like into containers such as a bowl and other dishes.

I have found only certain materials to be suitable for use in construction of the boards of the present invention. Materials such as a durable polymer material, that is tough and durable such as polypropylene and the like have been found to be suitable.

5 Preferably, the material will permit the use of a knife for chopping materials without the knife cutting through the material in the ordinary course of use. This requires a certain toughness as well as minimum thickness. Eventually, as will be appreciated, the board will be sufficiently damaged by the cutting action that replacement is  
10 necessary. The board in accordance with this invention can be readily discarded or otherwise disposed of without undue expense and may be placed in a dishwasher to be cleaned.

Turning to Figure 5 of the drawing there is illustrated an alternate form of the cutting board which as will be seen, has a  
15 substantially circular configuration. This cutting board 20 has a generally circular configuration with a punched out hole or the like 22, at one edge which might also be formed in an ear like portion 24 for hanging on the wall. This sheet as in the previous embodiment, may or may not have a rim portion as desired. The sheet or board  
20 can be easily rolled and funnelled into a shape for funneling chopped materials into a bowl as previously discussed. The size of the board as previously pointed out, can of course be altered or modified to any desired size as needed.

Thus, it will be seen from the above discussion that I have  
25 invented a certain flexible, durable cutting board which may be utilized directly as cutting board or utilized as a protector for a standard cutting board. While I have illustrated and described my invention by means of specific embodiment, it is to be understood that numerous changes and modifications may be made therein without  
30 departing from the spirit and scope of the invention as defined in the appended claims.

## CLAIMS

1. A cutting board comprising:  
2 a sheet of thin flexible durable plastic material having a planer  
face for supporting comestible to be chopped with a knife, said sheet  
4 of material having a durability sufficient to resist the cutting action  
of a cutting knife.
2. The cutting board of claim 1 wherein said sheet of material  
2 has a flexibility sufficient to permit rolling said board into a  
substantially funnel shape.
3. The cutting board of claim 2 having a thickness of about 9 mil.
4. The cutting board of claim 3 having a rim around the edge  
2 thereof.
5. The cutting board of claim 3 having a flat rectangular  
2 configuration.
6. The cutting board of claim 3 having a flat circular configuration.
7. The cutting board of claim 3 formed of a polymer material.
8. The cutting board of claim 7 wherein the material is  
2 polypropylene.
9. The cutting board of claim 8 having a generally rectangular  
2 configuration.
10. The cutting board of claim 8 having a generally circular  
2 configuration.

FILING RECEIPT


**UNITED STATES DEPARTMENT OF COMMERCE**  
**Patent and Trademark Office**

 Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
 Washington, D.C. 20231

SERIAL NUMBER	FILING DATE	GRP ART UNIT	FIL FEE REC'D	ATTORNEY DOCKET NO.	DRWGS	TOT CL	IND CL
06/117,848	02/04/80	323	\$ 65	1844	1	10	1

CARL R. ROWN  
 110 W. C ST., STE. 1305  
 SAN DIEGO, CA 92101

Receipt is acknowledged of the patent application identified herein. It will be considered in its order and you will be notified as to the examination thereof. Be sure to give the U.S. SERIAL NUMBER, DATE OF FILING, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this transmittal.

Applicant(s) **MARTIN E. GILLET, SANDIEGO, CA.**

**TITLE**  
**DISPOSABLE FLEXIBLE CUTTING BOARD**

## FILING RECEIPT


**UNITED STATES DEPARTMENT OF COMMERCE**  
**Patent and Trademark Office**

 Address : COMMISSIONER OF PATENTS AND TRADEMARKS  
 Washington, D.C. 20231

SERIAL NUMBER	FILING DATE	GRP ART UNIT	FIL FEE REC'D	ATTORNEY DOCKET NO.	DRWGS	TOT CL	IND CL
06/187,141	07/27/81	323	\$ 65		1	10	1

FRELING E. BAKER  
 110 W. C ST., STE. 1305  
 SAN DIEGO, CA 92101

Receipt is acknowledged of the patent application identified herein. It will be considered in its order and you will be notified as to the examination thereof. Be sure to give the U.S. SERIAL NUMBER, DATE OF FILING, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this transmittal.

Applicant(s)

MARIAN E. GILLET, SAN DIEGO, CA.

CONTINUING DATA-THIS APPLN IS A CON OF 06/117,848 02/06/80

TITLE  
 DISPOSABLE FLEXIBLE CUTTING BOARD

October 26, 1982

Mr. Freling Baker  
Brown and Martin  
Suite 1306, 110 West C St.  
San Diego, CA, 92101

*# 130 - enclosed*

Dear Mr. Baker,

It is with great reluctance that we send this check for further action on Patent Serial No. 287,141. I cannot understand why the examiner continues to compare it to a bath mat. Comparison to other cutting boards would seem more logical.

I am sending the complete package prepared by Mr. Fishman. It is on sale at Frazier Farms, Inc., Rancho Bernardao store, only. There has never been any advertising and only casual demonstration along with primary demonstrations of other things in the Housewares Department. They continue to re-order on a small scale. And I continue to get enthusiastic responses from people who are using them, including a card, dictated but not signed by Julia Child. Use what you need, or all of it, for submitting to the examiner.

Very truly yours,

*Walter and Marian Gillett*  
Walter and Marian Gillett



August 7, 1984

M E M O R A N D U M

Re: Marian Gillett  
"DISPOSABLE FLEXIBLE CUTTING BOARD"

The examiners contentions regarding 35 USC 112 set forth in the examiners answers should be reviewed. If the examiners position would be sustainable, then a continuation-in-part application might be advisable. Perhaps the first step would be to inquire of the client whether or not the product has been on the market for more than one year. From the drawings, it appears to be a non-marketed product therefore, a continuation-in-part adding the new matter would resolve the issue. This application could be filed even during the pendency of the appeal as a prophylactic measure. The results of a question of whether a response to the examiners answer requiring a cancellation of the matter was required.

August 7, 1984

M E M O R A N D U M

TO: Freling Baker  
FROM: Neil F. Martin  
Re: Marian E. Gillett

In talking with Marian Gillett, she indicates she did not receive a copy of the examiners answer mailed August 1, 1983. I covered with her the general substance of the examiners answer, and she was concerned for the implications that the amendment filed November 18, 1982 introduced new matter into the specification, specifically the original disclosure not reciting "non-elastic". She also indicates that her product has been on the market for one and one half years.

She indicated a preference for having you continue prosecuting the application, but requested that she be informed as to the effect of the examiners answer, and the prospects for a favorable decision. I agreed I would pass this information along to you with the file.

NFM:mlu

EDWARD W. CALLAN  
FRELING E. BAKER  
MICHAEL H. JESTER  
LAWRENCE A. MAXHAM

BAKER, MAXHAM, CALLAN & JESTER

ATTORNEYS AT LAW  
A PROFESSIONAL CORPORATION  
SUITE 1202  
110 WEST "C" STREET  
SAN DIEGO, CALIFORNIA 92101  
(619) 233-9004

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TRADEMARKS  
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August 31, 1984

Mrs. Marian Gillett  
16950 Tesoro Drive  
San Diego, California 92127

Re: U. S. Patent Application for  
"DISPOSABLE FLEXIBLE CUTTING BOARD"  
Serial No: 287,141 - Filed: July 27, 1981

Dear Mrs. Gillett:

I have just received your file from the Brown & Martin firm and have been informed by Neil Martin that he had spoke with you and that you had advised you had not received a copy of the Examiner's Answer. I am enclosing herewith a copy of the Examiner's Answer for your records.

Apparently, Mr. Martin discussed certain aspects of the Examiner's Answer with you and raised some concern over the issue of "new matter" in the application. I have reviewed my brief and the Examiner's Answer, which-incidentally I have just now seen for the first time, and can assure you that the "new matter" is or should be of very little concern regarding the ultimate issue of patentability of your invention. The "new matter", i.e. the "non-elastic" terminology, had the effect of forcing the Examiner to abandon his persistent rejection on the basis of the bathmat. The Examiner was forced to hunt for better references and did find the Whiteford patent which is much more pertinent, although in my opinion does not suggest the invention.

The Examiner's Answer places undue emphasis on the "non-elastic" so called "new matter" issue. The only real issue that should be the prime concern to the Board of Appeals is whether your invention is made obvious by the Whiteford patent. I maintain that it is not. However, the Board of Appeals could very well disagree with me.

Mrs. Marian Gillett  
August 31, 1984  
Page Two

In my judgment, you have a better than fifty-fifty chance of winning the appeal since the Whiteford tray assembly only discloses and suggests the covering of the specific styrofoam food tray and does not disclose or suggest your invention which is defined in the claims by means of specific structure for a specific function.

I do want to thank you for your confidence in my new firm and allowing me to continue with the prosecution of your application.

The Board of Appeals has typically taken approximately two years to make its decision after the brief was filed in the most recent cases which I have had. This means that unless the backlog has changed, it will be approximately June of 1985 before we receive a decision from the Board of Appeals.

I do hope that we win this one. Please call if you have any questions.

Very truly yours,

Freling E. Baker

FEB:dp

Enclosure